

Da4dzhuc

Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 Cr. 0761 (VM)

5 YUDONG ZHU,

6 Defendant.

7 -----x

8
9 October 4, 2013
3:06 p.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: CHRISTIAN R. EVERDELL

Assistant United States Attorney

18 SERCARZ & RIOPELLE, l.l.p.

Attorneys for Defendant

19 BY: MAURICE H. SERCARZ

Da4dzhuc

Conference

1 THE COURT: All right. This is a proceeding in the
2 matter United States v. Zhu. It is docket number 13 Cr. 761.

3 Counsel, please enter your appearances for the record.

4 MR. EVERDELL: Good afternoon, your Honor. Christian
5 Everdell for the government.

6 THE COURT: Good afternoon.

7 MR. SERCARZ: For the defendant Zhu, Maurice Sercarz,
8 S-e-r-c-a-r-z. Good afternoon, your Honor.

9 THE COURT: I understand that the defendant has been
10 arraigned in this matter and that this is the first appearance
11 before this Court.

12 Mr. Everdell, what are the government's contemplations
13 concerning discovery and any discussions or scheduling matters?

14 MR. EVERDELL: Yes, your Honor.

15 I think it might make sense to work backwards from a
16 possible trial date just because I have been talking to defense
17 counsel and it appears that his trial calendar is pretty jam
18 packed. And in discussions with Mr. Sercarz, it seems like he
19 would be unable to try the case until maybe the summer of next
20 year, which might impact the deadlines -- discovery deadlines
21 and motion schedules that we would set today.

22 In light of defense counsel's trial schedule and my
23 own trial schedule, because I have one starting November 18, if
24 we are working back from a summer trial date, perhaps some
25 motion deadline sometime in the end of January, early February,

Da4dzhuc

Conference

1 and then a discovery deadline -- I think we can start producing
2 things on a rolling basis, but if we could have a final
3 discovery date sometime at the end of December, I think that
4 would accommodate all parties' schedules and would work.

5 THE COURT: All right. That seems somewhat
6 categorical, Mr. Everdell. Are you saying that the parties
7 know for a fact that this matter is going to go to trial?

8 MR. EVERDELL: No. I don't think we are saying that,
9 your Honor. I am just trying to work with what I know defense
10 counsel's trial schedule to be on other matters.

11 The discovery in this case, just so the Court is aware
12 is mostly documentary. There are a number of computers' hard
13 drives that have been imaged already but would need to be
14 produced to the defendant. There are some subpoena documents
15 we have to turn over and some documents that were turned over
16 voluntarily by various entities and others. So we need to
17 collect all of that and create copies of the images and produce
18 all of that and reproduce copies of the statements that the
19 defendant made.

20 There was one search of a residence in Hartsdale, New
21 York, pursuant to a search warrant. There were a few documents
22 that were taken there, a lot of photographs and some equipment
23 that was seized; that wouldn't be produced, but we could make
24 it available if defense counsel wanted to inspect it. So we
25 could get this going on a rolling basis fairly quickly.

Da4dzhuc

Conference

1 And if it is the Court's pleasure to set a tighter
2 discovery deadline, we could probably get that done, but I just
3 am mindful of defense counsel's schedule on the trials.

4 THE COURT: All right. Mr. Sercarz, anything you wish
5 to add?

6 MR. SERCARZ: I should alert the Court that I will be
7 handling the responsibility for this case together with John
8 Cline, C-l-i-n-e, and I will be moving for his admission pro
9 hac vice. His offices are in San Francisco. I will have that
10 paperwork to the Court pretty soon, but that is another order
11 of business that I will be taking care of.

12 And I would ask the Court that once it sets a deadline
13 for discovery, it gives us ample time to make motions. The
14 case has a certain degree of complexity. The technology that's
15 involved, according to the allegations in the Indictment, is
16 complex, and certainly we will be moving for a bill of
17 particulars. We may be making other motions regarding the
18 legality of certain other charges. So we would like a good
19 interval between the deadline for discovery and the requirement
20 that we submit our motions.

21 THE COURT: All right. You mentioned "bill of
22 particulars." A bill of particulars essentially suggests that
23 you don't have enough information to give your client notice of
24 the nature of the charges and a fair opportunity to prepare.
25 If there are matters that you know that the government has not

Da4dzhuc

Conference

1 produced to you, don't file a motion; just go to the government
2 and say we need the following pieces of information, or outline
3 it in correspondence. And that way we can avoid unnecessary
4 motion practice.

5 MR. SERCARZ: You have my assurance that I will be
6 doing that, your Honor, as I receive the discovery.
7 Mr. Everdell and I have had a very good channel of
8 communication.

9 THE COURT: All right. I am just suggesting that --
10 perhaps you are not one who has this style of practice, but
11 there are too many who essentially communicate by motions. In
12 this court I try to discourage that as much as possible, and by
13 that means we are able to move matters along some more
14 expeditiously.

15 Again, to the extent that there are legitimate reasons
16 that you believe whatever the government has produced is
17 insufficient and you have discussed that with Mr. Everdell and
18 there are still disputes, at that point, rather than filing a
19 motion, send a letter to the Court indicating that there is
20 still some dispute on some issues, and you might be able to get
21 it resolved at a conference rather than by motion practice.

22 All right. Why don't we look at the calendar to see
23 whether we could schedule a discovery deadline by sometime the
24 early part of the new year and use that as an occasion for the
25 next conference, at which time we can examine whether there are

Da4dzhuc

Conference

1 going to be good faith reasonable bases for any motion
2 practice. We can schedule the motion briefing dates at that
3 point and also give us a better sense of when might be an
4 appropriate time for trial, if, in fact, by then the case is
5 still going to be in a trial mode.

6 Well, let me ask Mr. Everdell by when would the
7 government have submitted all of the discovery?

8 MR. EVERDELL: One moment, your Honor. If I can just
9 confer with defense counsel for one moment?

10 THE COURT: Yes.

11 (Pause)

12 MR. EVERDELL: Your Honor, I have just conferred with
13 defense counsel.

14 I think really the most important part of the
15 discovery is the laptops, and that's also the most
16 time-consuming because they are full laptops of information;
17 there is a lot of information on there. Those, I believe, have
18 already been imaged, so I don't think it would take too long to
19 be able to create a copy of the image to produce those on a
20 rolling basis, and then the rest can follow after that.

21 I would suggest that perhaps the government can
22 produce the laptops, or the images of the laptops, by the end
23 of the month, and then the remainder of the discovery to be
24 produced by the end of the year so that we can then set a
25 motion schedule after that.

Da4dzhuc

Conference

1 THE COURT: All right. Mr. Sercarz, assuming that you
2 receive all of the discovery by the end of the year, when is
3 the -- assuming that you believe that you have sufficient time
4 to have reviewed it --

5 MR. SERCARZ: Your Honor, given your predilection to
6 avoid motions where we can, I understand it. Do you want to
7 set it down for a conference, or do you want to simply give me
8 a motion deadline?

9 THE COURT: No. I would like to set a conference
10 time.

11 MR. SERCARZ: A conference time?

12 THE COURT: Yes.

13 MR. SERCARZ: If we get all the discovery material by
14 the end of December, certainly by the end of January we would
15 be prepared to review it, discuss it, we will have had an
16 opportunity to write to Mr. Everdell in the event that we don't
17 feel we are getting all of what we need. So I would recommend
18 something at the end of January.

19 THE COURT: All right. Let's look then toward the end
20 of January.

21 THE LAW CLERK: Friday, January 31st.

22 MR. EVERDELL: The government has no objection to
23 that.

24 MR. SERCARZ: What day of the week is that?

25 THE LAW CLERK: That is a Friday. 2 p.m.

Da4dzhuc

Conference

1 MR. SERCARZ: Fine.

2 MR. EVERDELL: That is fine for the government, your
3 Honor.

4 THE COURT: All right. Mr. Everdell, is there a
5 motion on that schedule?

6 MR. EVERDELL: Yes, your Honor.

7 The government moves to exclude time under the Speedy
8 Trial Act until the next conference date of January 31st.

9 MR. SERCARZ: No objection.

10 THE COURT: On the government's motion to exclude
11 adjourned time from speedy trial calculations from today
12 through January 31, 2014, no objections recorded by defendants,
13 the motion is granted. I find that the reasons conveyed to the
14 Court warrant this exclusion of time as it is intended to
15 ensure the effectiveness of counsel and to prevent any
16 miscarriage of justice.

17 The Court is satisfied that the ends of justice served
18 by the granting of this continuance outweigh the best interests
19 of the public and the defendant in a speedy trial.

20 This order of exclusion of time is entered pursuant to
21 the provisions of the Speedy Trial Act, Title 18, U.S.C.,
22 Sections 3161(h)(7)(B)(ii) and (iv).

23 If there is nothing else, thank you. Have a good day
24 and a good weekend.

25 MR. EVERDELL: Thank you, your Honor.

- - -